Supreme Court, U.S.
FILED

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No.

In The
Supreme Court of the United States

Ben J. Tomeo, United States of America,
Ben R. Tomeo
Petitioner(s)
v.
Honeywell International Company Inc. et al.
Respondent(s)

On Petition For Writ Of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION (S) PRESENTED FOR REVIEW

Introductory Statements for Questions 1-7 follows:

a) The record alleges that the Second Amended Complaint was filed late because it's mailings to and from the Court were delayed by crimes while in custody of the U.S. Postal Services. The record alleges many such instances since 1988 where mail relevant to this action was tampered with, delayed or not delivered while it was in custody of the U.S. Postal Services.

b) The District and Appellate Courts, as I known it, filed the record In Camera and Under Seal under the False Claims Act. The seal on only one defendant was cleared.

c) The following was extracted from the March 9, 1998 District Court Order: "Relators did not file their Second Amended Complaint until December 18, 1997, more than 30 days after this Court's October 24, 1997 Order. Accordingly, Relators' Second Amended Complaint is Dismissed, with prejudice, in its entirety". That Order is showed in Section 1 of the Appendix.

d) The following was extracted from the October 1, 1999 Appellate Court "Document": Appellant has filed, pro se, motions for injunctive relief, expedited appeal, suspension of the Rules, appointment of a master, and to add information. Upon due consideration it is ORDERED that all pending motions are denied, and the appeal is dismissed because it lacks an arguable basis in fact or law. See Pillay v. I.N.S., 45 F.3d 14,17 (2d Cir.1995; 28 U.S.C. 1915(e)". That "Document" is showed in the Section 1 of the Appendix.

Question 1: Were those Government officials who were duly informed required to investigate those allegations showed in Item "a" of the Introductory Statement, prior to the Court dismissing the Complaint on that basis? See Statutory Provisions 1-5 and Section 2 of

the Appendix Paragraph 1 et seq.

Question 2: Could an appellate court dismiss an appeal on a matter not under review in that court? See Items "c" and "d" of the Introductory Statement, Statutory Provision 6 and Appendix Section 2 Paragraph 1 et seq.

Question 3: Could an appellate court dismiss an appeal on a matter in which it does not have jurisdiction? See Items "c" and "d" of the Introductory Statement, Statutory Provision 6 and Appendix Section 2 Paragraph 1 et seq.

Question 4: Could an Appellate Court assert its superiority in an action it would not otherwise have reviewed? See Items "c" and "d" of the Introductory Statement, Statutory Provision 6, and Appendix Section 2 Paragraph 1 et seq.

Question 5: Were those Government officials in the Executive Branch, Congress and U.S. Department of Justice who were duly informed, required to fulfill oversight responsibilities relevant to those allegations showed in Item "a" of the Introductory Statement prior to the Court dismissing the Complaint on that basis? See Statutory Provisions 1-5 and Appendix Section 2 Paragraph 1 et seq.

Question 6: Could the District Court "blanket dismiss" an action on grounds showed in Item "a" of the Introductory Statement, when the Complaint contains numerous allegations in civil and criminal matters relevant to numerous defendants? See Statutory Provisions 1-5 and Appendix Section 2 Paragraph 1 et seq.

Question 7: Should the Appellate Court have considered those allegations showed in Item "a" of the Introductory Statement when considering whether to

dismiss this action? See Statutory Provisions 1-6, and Appendix Section 2 Paragraph 1 et seq.

Introductory Statement for Questions 8-10: The February 2, 1998 Motion filed in the District Court by the attorneys in the U.S. Department of Justice did not ask the Court to dismiss this action because the Second Amended Complaint was filed late. That motion is signed by Assistant Attorney General, Frank W. Hunger.

Question 8: Was the Plaintiffs denied their right to a hearing on the August 22, 1997 and February 2, 1998 Motion suggesting that the action be dismissed? See Statutory Provisions 7-9 and Section III of the Statement of the Case.

Question 9: Does the False Claims Act prohibit the U.S. Attorney General from designating the Assistant U.S. Attorney General to act on her behalf in this case? See Statutory Provisions 7-9 and Section III of the Statement of the Case.

Question 10: If the U.S. Attorney General could delegate such authority in this case, do the Plaintiffs have the right to a statement from the U.S. Attorney General saying that his/her understanding of the case is full and complete? See Statutory Provisions 7 –9 and Section III of the Statement of the Case.

Question 11: Could a pro se litigant in a qui tam action filed under the False Claims Act represent the United States in all relevant Federal Courts including the Supreme Court? Statutory Provisions 7 and 10.

Question 12: If the answer to Question 11 is no, relevant to the history of this case thus far, who would?

Introductory Statement for Question 13: The record

shows only one instance where the U.S. Department of Justice asked for a 30-day extension. In that instance, the Court granted an extension to August 21, 1997. The next Motion filed by the attorney's in the Department of Justice is dated February 2, 1998.

Question 13: Should the Department of Justice be required to show they had not violated those appropriate rules governing extensions of time while the case was proceeding in the District Court, Appellate Court and now, in the Supreme Court? See Statutory Provision 11.

Question 14: Is it an arguable basis in fact when, alleged errors in national standards demonstrate to be the cause of the degradation of hundreds of billions of dollars of property and data that belongs to others? In addition, when those errors and causes are kept secret to the victims, thus denying them recourse in every direction? See Statutory Provision 12 et seq., Appendix Section 2 Paragraph 2 & 3 et seq., and Statement of the Case Paragraph 2 & 3 et seq.

Question 15: Is it an arguable basis in fact when, credible evidence would show that alleged errors in national standards will in time demonstrate to be the cause of degradation of hundreds of billions of dollars of property and data that belongs to others? In addition, when those errors and causes are kept secret to the victims, thus denying them recourse in every direction? See Statutory Provision 12 et seq., Appendix Section 2 Paragraphs 2 & 3 et seq., and Statement of the Case Paragraphs 2, & 3 et seq.

Question 16: Is it an arguable basis in fact for a case to advance when industry groups initiatives for manufacturing are alleged to be the cause of the degradation hundreds of billions of dollars of property and data that belongs to others? In addition, when those

errors and causes are kept secret to the victims, thus denying them recourse in every direction? See Statutory Provision 12 et seq., Appendix Section 2 Paragraph 2 & 3 et seq., and Statement of the Case Paragraphs 2 & 3 et seq.

Question 17: Is it an arguable basis in fact for a case to advance whether or not such allegations as showed in Questions 14, 15, and 16 are investigated?

Question 18: Did the plaintiffs have a right to know - and relevant defendants have a duty to say in a timely manner so the petitioners would have had a fair chance to guard against or mitigate those alleged losses showed in Questions 14-17? See Statutory Provisions 13-14 et seq.

Introductory Statement for Question 19: The claims in the Second Amended Complaint lay out the cause of action for each defendant. In addition, the Complaint clearly identifies those claims with those defendants under the False Claims Act. In addition, it is clear that no claim is alleged against those defendants in the Government under the False Claims Act. The petitioner argued in more than one instance that those attorneys in the Department of Justice by arguing all claims are under the False Claims Act are in violation of Federal Rule of Civil Procedure 8(b).

Question 19a: Relevant to the Introductory Statement showed above. Are those attorneys in the Department of Justice by not complying with Federal Rule of Civil Procedure 8(b), denying the United States its right to argue that its losses relevant to Questions 16-19 are recoverable under appropriate statutes of The False Claims Act? See Appendix Section 2 Paragraph 3.1 et seq. and precedents 1 and 2 showed in the Table of Authorities.

Question 19b: Relevant to Question 19a, are the respondents "frivolous"? See Statutory Provision 15?

QUESTION (S) PRESENTED FOR REVIEW

Question 20a: Are products and data developed at Government expense the property of the Government?

Question 20b: If the answer to Question 20 is yes, should the Government have legal recourse to recover losses showed in Question 14, 15 and 16?

Question 21a: Are patents and copyrights derived at Government expenses in the public domain whether or not the work was performed by employees of the Government other than when such matters threaten national security? See Statutory Provision 16 et seq.

Question 21b: Relevant to Question 21a: Could the president, congress or any other official in the Government agree otherwise with those whom the Government paid to perform such work? See Statutory Provision 16 et seq., 17 and 18.

Introductory Statement for Question 22: The case makes the point in the record that some things are too valuable to the public interest to be protected by patent or copyright.

Question 22: Relevant to the Introductory Statement showed above, are some things too valuable to the public interest to be protected by patent or copyright such as those things showed in Appendix Section 2 Paragraph 2 & 4 et seq., and Statement of the Case Paragraph 2 & 4 et seq.

Introductory Statement for Question 23: It is public knowledge that the Customary and Metric Standards for weights and measures have been in use in United States since say, 1974.

Question 23: Relevant to the Introductory Statement showed above, is that a violation of the U.S.

Constitution? See Statutory Provision 19.

Question 24: Could the president manage the Executive Branch of Government to preserve, protect and defend the U.S. Constitution and maintain free enterprise if the Government did not have an industrial policy for manufacturing and education that would allow him or her to do so? See Statement of the Case Paragraph 4 et seq., Appendix Section 2 Paragraph 4 et seq. and Statutory Provision 20.

Question 25: Is the Congress in violation of the U.S. Constitution if the Government does not have an industrial policy for manufacturing and education that would allow the president to maintain free enterprise and manage the Executive Branch of the Government to preserve, protect and defend the Constitution of the United States? See Statement of the Case Paragraph 4 et seq., Appendix Section 2 Paragraph 4 et seq., and Statutory Provision 21.

Question 26: Do the people have a right to know whom those are from outside the Government who may be advising the president on matters that involve managing the Executive Branch of the Government? Especially if, relevant to what may or may not be the nations industrial policy for manufacturing and education? Especially if, any one those advisors have fiduciary responsibilities to shareowners of an employer or any one else other than the Government. See Statement of the Case Paragraph 4.2 (b)(c).

Question 27: In light of this case, is the victims, The United States of America et al right to know superior to any man's right not to know when they a) Are high level officials in the Government. b) Compete for high elective federal offices. c) Exert influence in more than one vote relevant to elections to those high public offices?

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Introductory Statement for Question 28: The record has made the point relevant to those allegations that failure of an end-item sold to the Government (and perhaps to the private sector) is a failure of all companies and parties associated with it, and that the Government in this case has recourse to recover such losses because it has sovereign immunity and its officials have not been charged under those statutes.

Question 28: Does Statutory Provision 22 have any relevance to this case?

Introductory Statement for Question 29: The record in numerous instances states pleader's opinion that his copyright for dimensional analyses is so valuable to the common good that those expressions it contains can not be protected by copyright under provisions of the Copyright act and Constitution of the United States. In addition, the record alleges that it is infringed on every time products such as microchips are manufactured. In addition, it alleges that a company is infringing on it.

Question 29: Is the petitioner entitled to seek relief under Paragraph 1498 et seq., Patent and copyright cases in the Court of Federal Claims. See Statutory Provision 23.

Question 30: Could the Congress pass legislation that losses are not recoverable because those who may be liable for such losses do more good than harm?

Question 31: Is it a crime to lie or mislead Government officials in matters relevant to this case as showed in the record?

Question 32: Could the petitioner determine if he should have been awarded a percentage of the settlement showed in Paragraph 31i, Section 2 of the Appendix.

PARTIES TO THE PROCEEDINGS

The petitioners are Ben J. Tomeo pro se, United States of America and Ben R. Tomeo.

There are some twenty-eight respondents. The District and Appellate Court identified only Allied Signal Company Inc. as a respondent. The Allied Signal Company and Honeywell Company Inc. merged. The new combined company is Honeywell International Inc. The corporate office for the new company was the Allied Signal complex in Morristown, New Jersey.

The petitioner, at this time, only identifies Honeywell International Inc. as a respondent for this petition for writ of certiorari submitted for consideration for review in the Supreme Court of the United States.

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Paragraph 1 District Court Order dated March 9, 1998 showed in Section 1 of the Appendix & history of the case.

Paragraph 2 ANSI Y14.5.

Paragraph 3 Errors in standards and industry group strategies for manufacturing and education.

Paragraph 4 Industrial policy for manufacturing and education.

Paragraph 5 How the history of the case effected the petitioner and the United States and extractions from correspondence.

Paragraph 6 Retaliations.

Paragraph 7 Summation.

TABLE OF AUTHORITIES

Precedents under which the Courts could grant relief under the False Claims Act are:

1. The August 25, 1997 $11.3 billion settlement that the State of Florida reached with the Tobacco companies. The settlement also included restriction of billboards and release of secret industry documents. See Questions 14,15, 16, 18, 19a, 20(a)(b), 26, and 27.

2. The $ 2.1 billion settlement under the False Claims Act Adams v. Toshiba. That settlement is due to the "bug" in software chips that would randomly delete or alter data after being transferred to floppy disk devices without the user's knowledge. See Questions 14,15, 16, 18, 19a, 20(a)(b), 26, and 27.

Rule of the Supreme Court 10. See Statement of the Case Section II Jurisdiction (a) and Statutory Provision 24.

Rule of the Supreme Court 17. See Statement of the Case Section II Jurisdiction (d) and Statutory Provision 25.

28 U.S.C. Paragraph 2403(a) may apply. The U.S. Solicitor General is served. See Statement of the Case Section III.

U.S.C. 28 PARAGRAPH 535: See Statutory Provision 1.

Federal Rule of Civil Procedure 25 (d) and Rule of Appellate Procedure 43 (c): See Statutory Provision 2.

U.S.C. Paragraph 1702: Statutory Provision 3.

U.S.C. Paragraph 1708: See Statutory Provision 4.

TABLE OF AUTHORITIES

U.S.C. Paragraph 1709: See Statutory Provision 5.

U.S.C. Paragraph 1291: See Statutory Provision 6.

False Claims Act Paragraph 3730(b), Section 3729: See Statutory Provision 7.

The False Claims Act Paragraph 3812: See Statutory Provision 8.

The False Claims Act: See Statutory Provision 9.

Title 38 Paragraph 1654: See Statutory Provision 10.

The False Claims Act Paragraph 3030 (4) and 3030 et seq. See Statutory Provision 11.

"Fact": Extracted from Black's Law Dictionary: See Statutory Provision 12.

a) City of South Euclid v. Clapacs, 6 Ohio Misc. 101, 213 N.E.2d 828, 832.

b) Peoples v. Peoples, 10 N.C.App.402, 179 S.E.2d 138, 141. Rule of Civil Procedure 41(b).

c) Schad v. Twentieth Century–Fox Film Corporation, C.C.A.Pa.136 F.2d 991, 993.

d) State ex rel. Herbert v. Whims, 68 Ohio App. 39, 38 N.E.2nd 596, 599, 22 OO. 110.

e) Pacific Telephone & Telegraph Co. v. Wallace, 158 Or. 210, 75 P2d 942, 947.

f) Hoagland's Estate, 126 Neb. 377, 253 N.W. 416.

g) White v. Abrams C.A. Cal., 495 F.2d 724, 729.

h) Husbands v. Com. Of Pa., D.C. Pa. 395 F.Supp.1107, 1139.

i) State v. Haremza, 213 Kan. 201, 515P.2d 1217, 1222.

j) Godesky v. Provo City Corp. Utah, 690 P.2d 541, 547.

k) Cartwright v. Golub Corp., 51 A.D.2d 407 381 N.Y.S.2d 901, 902.

l) Hinkely v. Town of Barnstable, 311 Mass.600, 42 N.E.2d 581, 584.

m) McCormick, Evidence Paragraphs 328 et seq. (3rd ed.1984).

"Right": Extracted from Black's Law Dictionary: See Statutory Provision 13.

a) See Bill of Rights; Civil Liberties; Civil Rights Act; Natural Rights.

b) Restatement of the law of property, Paragraph 1.

c) "Right" has the force of "claim", and is properly expressed by the Latin "jus". See also Conditional right, Correlative rights; Droit; Jus; Justice; Natural rights; Power; Recht; Vested rights.

d) Rights may be described as perfect or imperfect, according as their action or scope is clear, settled, and determinate, or is vague unfixed.

Right, primary or secondary.
Preventive or protective secondary rights.
Remedial or reparative secondary rights.
Rights absolute and qualified.

e) Rights, legal or equitable. Procedurally under rules of Civil Procedure, both legal and equitable rights are enforced in the same court under a single cause of action.

f) Constitutional Rights. Blackstone, I.Comm.123. Rights, natural, civil, political and personal.

g) Civil rights. Thirteenth and Fourteenth amendments to the Constitution, and various acts of congress (e.g. Civil Rights Act) made in pursuance thereof. See Bill of Rights; Civil liberties; Civil Rights Acts.

h) Right of Action. Landry v. Acme Flour Mills Co., 202 Okl. 170, 211 P2d512, 515. Right of injured to secure redress for violation of his rights. Fields v. Synthetic Ropes, Inc., 9 Storey 135, 215, A2d 427, 432. A right presently to enforce a cause of action by suit. McMahon v. U.S.C.A.Pa. 186F2d 227, 230. Operative facts giving rise to a right of action comprise a "cause of action". Shiflet v. Eller, 228 Va. 115, 319 S.E.2nd 750, 754.

i) "Duty": Extracted from Black's Law Dictionary: See Statutory Provision 14.

a) Karrar v. Barry County Road Com'n, 127 Mich.App. 821, 339 N.W.2d 653, 657. Obligatory conduct or service.

b) Mandatory obligation to perform. Huey v. King, 220 Tenn.189, 415, S.W.2d 136. An obligation recognized

by the law, requiring the actor to conform to certain standard of conduct for protection of others against unreasonable risks.

c) Samson v. Saginaw Professional Building. Inc., 44 Mich.App. 658, 205, N.W.2d 833, 835. See also legal duty obligation.

d) Legal standard of reasonable conduct in light of apparent risk. Merluzzi v. Larson, 96 Nev. 409, 610p2d 739.741.

The word "duty" is used is used throughout the Restatement of Torts to denote the fact that the actor is required to conduct himself in a particular manner at the risk that if he doe not do so he becomes subject to liability to another to whom the duty is owed for any injury sustained by such other, of which that actor's conduct is a legal cause. Reinstatement, Second, Torts Paragraph 4. See care and due care.

In its use in jurisprudence, duty is correlative of right. Thus, wherever there exists a right in any person, there also rests a corresponding duty some other person or upon all persons generally.

e) Duty to Act - Obligation to take some action to prevent harm to another and for failure or which there may or may not be liability in tort depending on circumstances and the relationships of parties with each other.

Federal Rule of Civil Procedure 8(b): See Statutory Provision 15.

"Frivolous": Extracted from Black's Law Dictionary. Liebowitz v. Aimexco Inc., Colo.App., 701 P.2d 140, 142. See Statutory Provision 16.

TABLE OF AUTHORITIES

Copyright Act of 1976 Chapter 2 Section 201(b). Works for hire: See Statutory Provision 17a.

Copyright Act 1976 Appendix B Section 105, Subject Matter of Copyright: See Statutory Provision 17b. (United States Government Works).

U.S. Constitution, Article II Section 1: See Statutory Provision 18.

U.S. Constitution Article VI: See Statutory Provision 19.

U.S. Constitution Article I Section8: See Statutory Provision 20.

U.S. Constitution Article II Section 1: See Statutory Provision 21 and 22.

Commercial Unit: Extracted from Black's Law Dictionary: See Statutory Provision 23.

U.C.C. Paragraph 2-105(6) not included in this writ. See Precedents 1, and 2.

United States Court of Federal Claims Paragraph 1498: See Statutory Provision 23.

STATUTORY PROVISIONS

Statutory Provision 1: U.S.C. 28 PARAGRAPH 535: Investigations of crimes involving Government officers and employees; limitations

a) The Attorney General and the Federal Bureau of Investigation may investigate any violation of title 18 involving government officers and employees-.

(1) notwithstanding any other provision of law; and

(2) without limiting the authority to investigate any matter which is conferred to them or on a department or agency of the Government.

(b) Any information, allegation, or complaint received in a department or agency of the executive branch of Government relating to violations of title 18 involving Government officers and employees shall be expeditiously reported to the Attorney General by the head of the department or agency unless-

(1) the responsibility to perform an investigation with respect thereto is specifically assigned otherwise by another provision of the law; or

(2) as to any department or agency of the Government, the Attorney General directs otherwise with respect to a specified class of information, allegation, or complaint.

(c) This section does not limit-

(3) the primary authority of the Postmaster General to investigate postal offenses.

Statutory Provision 2: Federal Rule of Civil Procedure 25 (d) and Rule of Appellate Procedure 43 (c) Public Officers; Death or Separation From Office: (1) When a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not

effecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not effect the substitution.

2) A public officer who sues or is sued in an official capacity may be described as a party by the officer's official title rather than by name; but the court may require the officer's name to be added.

Statutory Provision 3: U.S.C. Paragraph 1702. "Obstruction of correspondence: Whoever takes any letter, postal, or package out of any post office or any authorized depository for mail matter, or from any letter or mail carrier, or which has been in any post office or authorized depository, or in the custody of any letter or mail carrier, before it has been delivered to the person to whom it was directed, with design to obstruct correspondence, or to pry into the business secrets of another, or opens, secrets, embezzles, or destroys the same, shall be fined not more than $2000 or imprisoned more than five years or both".

Statutory Provision 4: U.S.C. Paragraph 1708. "Theft or receipt of stolen mail matter generally: Who ever steals, takes, or abstracts, from or out of any mail, post office, or station thereof, letter box, mail receptacle, or any mail route or authorized depository for mail matter, or from a letter or mail carrier, any letter, postal card, package, bag, or mail, or abstracts or removes from any such letter, package, bag, or mail, any article or thing contained therein, or secrets, embezzles, or destroys any such letter, postal card, package, bag, or mail, or any article or thing contained therein; or

Who ever steals, takes, or abstracts, or by fraud or deception obtains any letter, postal card, package, bag, or mail, any article or thing contained therein which has been left for collection upon or adjacent to collection box or other authorized depository of mail

matter; or Who ever buys, receives, or conceals, or unlawfully has in his possession, any letter, postal card, package, bag, or mail, any article or thing contained therein, which has been do stolen, taken, embezzled, or abstracted, as herein described, knowing the same to have been stolen, taken, embezzled, or abstracted - Shall be shall be fined not more than $2000 or imprisoned more than five years or both".

Statutory Provision 5: U.S.C. Paragraph 1709 "Theft or mail matter by officer or employee: Whoever, being a Postal Service officer or employee, embezzles any letter, postal card, package, bag, or mail, or any article or thing contained therein entrusted to him or which comes into his possession intended to be conveyed by mail, or carried or delivered to any carrier, messenger, agent, or other person employed in any department of the Postal Service, or forwarded through or delivered from any post office or station thereof established by authority of the Postmaster General or of the Postal Service; steals, abstracts, or removes from any such letter, package, bag, or mail, any article or thing contained therein, shall be fined not more than $2000 or imprisoned not more than five years or both".

Statutory Provision 6: U.S.C. Paragraph 1291. "Final decisions of district courts. The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of all final decisions of the district courts of the United States -".

Statutory Provision 7: False Claims Act Paragraph 3730(b): Actions by private persons. – A Person may bring a civil action for a violation of section 3729, for the person and for the United States Government. The action shall be brought in the name of the Government. The action shall be dismissed only if the court and the Attorney General give written consent to the dismissal and

their reasons for consenting.

Statutory Provision 8: The False Claims Act Paragraph 3812: Prohibition against Delegation: Any function, duty, or responsibility which this chapter specifies be carried out by the Attorney General or an Assistant Attorney General designated by the Attorney General shall not be delegated to, or carried out by, any other officer or employee of the Department of Justice.

Statutory Provision 9: The False Claim Act. The "Act" is showed in the Addendum to the Brief filed in the court of appeals.

Statutory Provision 10: Title 38 Paragraph 1654. Appearance personally or by Counsel. - In all Courts of the United States the parties may plead and conduct their own cases personally or by Counsel as, by the rules of such Courts respectively, are permitted to manage and conduct causes therein.

Statutory Provision 11: The False Claims Act Paragraph 3030 (4): Whether or not the Government proceeds with the action, upon a showing by the Government that such actions of discovery by the person initiating the action would interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay discovery for a period of not more than 60 days. b) The balance of Paragraph 3030 and Statutory Provision 9 et seq. appears to be relevant to the outcome of the case.

Statutory Provision 12: Fact, from Black's Law Dictionary:

A thing done; an action performed or an incident transpiring; an event or circumstance; an actual occurrence; an actual happening in time and space or an

event mental or physical; that which takes place. City of South Euclid v. Clapacs, 6 Ohio Misc. 101. N.E.2d 828, 832. A fact is either a state of things, that is, an existence, or a motion, that is, an event. The quality of being actual, actual existence or occurrences.

b) Evidence. A circumstance, event or occurrence as it actually takes or took place; a physical object or appearance, as it usually exists or existed. An actual and absolute reality, as distinguished from a mere supposition or opinion. A truth as, distinguished from fiction or error. "Facts" means reality of events or things the actual occurrence or existence of which is to be determined by evidence. Peoples v. Peoples, 10 N.C.App.402, 179 S.E.2d 138, 141. Under Rule of Civil Procedure 41(b), providing for motion for dismissal at close of plaintiff's evidence in nonjury cases or ground that upon the facts and the law plaintiff has shown no right to relief, the "facts" referred to are the prima facie facts shown by plaintiff's evidence viewed in light most favorable to him. Schad v. Twentieth Century–Fox Film Corporation, C.C.A.Pa., F2d 991, 993

c) Prima facie- At first sight; on the first appearance; on the face of it; so far as can be judged from the first disclosure; presumably; a fact presumed to be true unless disproved by some evidence to the contrary. State ex rel. Herbert v. Whims, 68 Ohio App. 39, 38 N.E.2nd596, 599, 22 00.110. ?

d) Prima facie case. Such as will prevail until contradicted and overcome by other evidence. Pacific Telephone & Telegraph Co. v. Wallace, 158 Or. 210, 75 P2d 942, 947. A case which has proceeded upon sufficient proof to that stage where it will support finding if evidence to contrary is disregarded. In re Hoagland's Estate, 126 Neb. 377, 253 N.W. 416.

e) A prima facie case consists of sufficient evidence in the type of case to get plaintiff past a motion for directed verdict in a jury case or motion to dismiss in a nonjury case; it is the evidence necessary to require defendant to proceed with his case. White v. Abrams C.A.Cal., 495 F2d 724, 729. Courts use concept of prima facie case in two senses: (1) in sense of plaintiff producing evidence sufficient to render reasonable a conclusion in favor of allegation he asserts; this means plaintiff's is evidence is sufficient to allow his case to got to jury, and (2) courts use "prima facie" to mean not only that plaintiff's evidence would reasonable allow conclusion plaintiff seeks, but also that plaintiff's evidence compels such a conclusion if the defendant produces no evidence to rebut it. Husbands v. Com. Of Pa., D.C.Pa., 395 F.Supp.1107, 1139.

f) Prima facie evidence. Evidence good and sufficient on its face. Such evidence, as in judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense, and if not rebutted or contradicted, will remain sufficient. Evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue in which it supports, but which may be contradicted by other evidence. State v. Haremza, 213 Kan. 201, 515p2d 1217, 1222.

g) That quantum of evidence that suffices for proof of a particular fact is contradicted by other evidence; once a trier of fact is faced with conflicting evidence, it must weigh the prima facie evidence presented. Godesky v Provo City Corp. Utah, 690 P2d 541, 547. Evidence which, standing alone and unexplained, would maintain the proposition and warrant the conclusion to support which it is introduced. An inference or presumption of law, affirmative or negative of a fact, in the absence of proof, or until proof can be obtained or produced to

overcome inference.

h) Prima facie tort. The infliction of intentional harm resulting in damage, without excuse or justification, by an act or series of acts which otherwise would be lawful. Cartwright v. Golub Corp., 51 A.D.2d 407, 381 N.Y.S.2d 901, 902.

i) Fact and law distinguished. "Fact" is very frequently used in opposition or contrast to "law". Thus questions of "fact" are for the jury; questions of "law" for the court. E.g. fraud in "fact" consists in an actual intention to defraud, carried into effect; while fraud imputed by law arises from the person's conduct in its necessary relations and consequences. A "fact", as distinguished from the "law", may be taken as that out of which the point of law arises, that which is asserted to be or not to be for the purpose of applying or refusing to apply a rule of law. Hinkely v. Town of Barnstable, 311 Mass.600, 42 N.E.2d 581, 584. Law is a principle; fact is an event. Law is conceived; fact is actual. Law is a rule of duty; fact is that which has been according to or in contravention of the rule.

j) The following is from the Law Dictionary authored by Steven H. Gifis, Third Edition. Facts maybe so well known that a court will take judicial notice of it, that is take the fact into consideration without presentation of evidence on the fact. McCormick, Evidence Paragraphs 328 et seq. (3rd ed.1984).

Statutory Provision 13: Right, from Black's Law Dictionary:

a) As a noun, and taken in an abstract sense, means justice, ethical correctness, or consonance with the rules of law or the principles of morals. In this signification it answers to one meaning of the Latin "jus",

and serves to indicate law in the abstract, considered as the foundation of all rights, or the complex of underlying moral principles which impart the character of justice to all positive law, or give it an ethical content. As a noun and taken in a concrete sense, a power privilege, faculty, or demand, inherent in one person and incident upon another. Rights are defined generally as "powers of free action". And the primal rights pertaining to men are enjoyed by human beings purely as such, being grounded in personality, and existing antecedently to their recognition by positive law. But leaving the abstract moral sphere, and giving to the term a juristic content, a "right" is well defined as, "a capacity residing in one man of controlling, with the assent and assistance of the state, the actions of others".

b) As an adjective, the term "right" means just, morally correct, consonant with ethical principles or rules of positive law. It is the opposite of wrong, unjust, illegal.

c) A power, privilege, or immunity guaranteed under a constitution, statutes or decisional law, or claimed as a result of long usage. See Bill of Rights; Civil Liberties; Civil Rights Act; Natural Rights.

d) In a narrower signification, an interest or title in an object of property and legal claim to hold, use or enjoy it, or to convey or donate it, as he may please.

e) A legally enforceable claim of one person against another, that the other shall do a given act, or shall not do a given act. Restatement of the law of property, Paragraph 1.

f) That which one person ought to have or receive from another, it being withheld from him, or not in his possession. In this sense, "right" has the force of "claim",

and is properly expressed by the Latin "jus". See also Conditional right, Correlative rights; Droit; Jus; Justice; Natural rights; Power; Recht; Vested rights.

General Classification

g) Rights may be described as perfect or imperfect, according as their action or scope is clear, settled, and determinate, or is vague unfixed.

h) Rights are also either in *personam* or in *rem.* A right in *personam* is one which imposes an obligation on a definite person. A right in *rem* is one which imposes an obligation on persons generally; i.e. either on all the world or on all the world except certain determinate persons. Thus, if I am entitled to exclude all *personsam* from a given piece of land, I have right in *rem* in respect of that land; d if there are one or more persons, A., B., and C., whom I am not entitled to exclude from it, my right is still a right in *rem.*

i) Right scan either be described as either *primary* or *secondary*. *Primary* rights are those which can be created without reference to rights already existing. *Secondary* rights can only arise for the purpose of protecting or enforcing primary rights. They are either preventive (protective) or remedial (reparative).

j) Preventive or protective secondary rights exist in order to prevent the infringement or loss of primary rights. They are judicial when they require the assistance of a court of law for their enforcement, and extrajudicial when they are capable of being exercised by the party himself. *Remedial or reparative secondary* rights are also either judicial or extrajudical. They may further be divided into (1) rights of restitution or restoration, which entitle the person injured to be replaced in his original position; (2) rights of enforcement, which entitle the person injured to

the performance of an act by the person bound; and rights of satisfaction or compensation.

k) With respect to ownership of external objects of property, rights many be classed as *absolute* and *qualified.* An absolute right gives to the person in whom it inheres the uncontrolled dominion over the object at all times for all purposes. A qualified right gives the possessor a right to the object for certain purposes or under certain conditions only. Such is the right of a bailee to recover the article bailed when it has been unlawfully taken from him by a stranger.

l) Rights are either *legal* or *equitable.* The former is the case where the person seeking to enforce the right for his own benefit has the legal title and a remedy at law. The latter are such as are enforceable only in equity; as, at the suit *cestui que trust.* Procedurally under rules of Civil Procedure, both legal and equitable rights are enforced in the same court under a single cause of action.

Constitutional Rights

m) There is also a classification of rights, with respect to the constitution of civil society. Thus according to Blackstone, the rights of persons, considered in their natural capacities, are of two sorts, - absolute and relative; absolute which are as appertain and belong to particular men, merely as individuals or single persons; relative, which are incident to them as members of society, and standing in various relations to each other." 1Bl.Comm.123.

n) Rights are also classified in constitutional law as natural, civil, and political, to which there is sometimes added the class of "personal rights"

o) *Natural* rights are those which grow out of the nature of man and depend upon personality, as distinguished from such as are created by law and depend upon civilized society, or they are those which are plainly assured by natural law, or those which by fair deduction from the present physical, moral, social, and religious characteristics of man, he must be invested with, and he ought to have realized for him in a jural society, in order to fulfill the ends the which his nature calls him. Such are the rights of life, liberty, privacy, and good reputation.

p) *Civil* rights are such as belong to every citizen of the state or country, or, in a wider sense, to all its inhabitants, and are not connected with the organization or administration of government. They include the rights of property, marriage, equal protection of the laws, freedom of contracts, trial by jury, etc. Or as otherwise defined, civil rights are rights appertaining to a person by virtue of his citizenship in a state or community. Such term may also refer, in its general sense, to rights capable of being enforced or redressed in a civil action. Also, a term applied to certain rights secured to citizens of the United States by the Thirteenth and Fourteenth amendments to the Constitution, and by various acts of congress (e.g. Civil Rights Act) made in pursuance thereof. See Bill of Rights; Civil liberties; Civil Rights Acts.

q) *Political* rights consist in the power to participate, directly or indirectly, in the establishment of government, such as the right of citizenship, that of suffrage, the right to hold public office, and the right to petition.

r) *Personal* rights is a term of rather vague import, but generally it may be said to mean the right of personal security, comprising those of life, limb, body, health, reputation, and the right of personal liberty.

s) Right of Action. The right to bring suit; a legal right to maintain an action, growing out of a given transaction or state of facts and based thereon. Right of action pertains to remedy and relief judicial procedure Landry v. Acme Flour Mills Co., 202 Okl. 170, 211 P2d512, 515. Right of injured to secure redress for violation of his rights. Fields v. Synthetic Ropes, Inc., 9 Storey 135, 215, A2d 427, 432. A right presently to enforce a cause of action by suit. McMahon v. U.S.C.A.Pa. 186F2d 227, 230. Operative facts giving rise to a right of action comprise a "cause of action". Shiflet v. Eller, 228 Va. 115, 319 S.E.2nd 750, 754. *Compare* Cause of action.

Statutory Provision 14: Duty. A human action which is exactly conformable to the laws which require us to obey them. Legal or moral obligation. An obligation that one has by law or contract. Obligation to conform to legal standard of reasonable conduct in light of apparent risk. Karrar v. Barry County Road Com'n, 127 Mich.App. 821, 339 N.W.2d 653, 657. Obligatory conduct or service. Mandatory obligation to perform. Huey v. King, 220 Tenn. 189, 415, S.W.2d 136. An obligation, recognized by the law, requiring the actor to conform to certain standard of conduct for protection of others against unreasonable risks. Samson v. Saginaw Professional Building. Inc., 44 Mich.App. 658, 205, N.W.2d 833, 835. See also legal duty obligation.

a) A thing that which is due from a person; that which a person owes to another. An obligation to do a thing. A word of more extensive signification than "debt," although both are expressed by the same Latin word "*debitum*." Sometimes, however, the term s used synonymously with debt.

b) Those obligations of performance, care, or observance which rest upon a person in an official or

fiduciary capacity; as the duty of an executor, trustee, Manager etc.

c) In negligence cases term may be defined as an obligation, to which law will give recognition and effect to comport to a particular standard of conduct toward another, and obey the duty is invariable the same; one must conform to legal standard of reasonable conduct in light of apparent risk. Merluzzi v. Larson, 96 Nev. 409, 610p2d 739.741. The word "duty" is used is used throughout the Restatement of Torts to denote the fact that the actor is required to conduct himself in a particular manner at the risk that if he doe not do so he becomes subject to liability to another to whom the duty is owed for any injury sustained by such other, of which that actor's conduct is a legal cause. Reinstatement, Second, Torts Paragraph 4. See care and due care.

d) In its use in jurisprudence, this word is correlative of right. Thus, wherever there exists a right in any person, there also rests a corresponding duty some other person or upon all persons generally.

e) Duty to Act - Obligation to take some action to prevent harm to another and for failure or which there may or may not be liability in tort depending on circumstances and the relationships of parties with each other.

Statutory Provision 15: From Blacks Law Dictionary. A pleading is "frivolous" when it is clearly insufficient on its face, and does not controvert them material points of the opposite pleading, and is presumably interposed for mere purposes of delay or to embarrass the opponent. A claim or defense is frivolous if a proponent can present no rational argument based upon the evidence or law in support of that claim or defense. Liebowitz v. Aimexco Inc., Colo.App., 701 P.2d 140, 142.

STATUTORY PROVISIONS

Statutory Provision 16a: Copyright Act of 1976, Chapter 2 Section 201(b). Works for hire. In the case of a work made for hire, the employer or the person for whom the work was prepared is considered the author for purpose of this title, and unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.

Statutory Provision 16b: Copyright Act 1976, Appendix B Section 105. Subject Matter of Copyright: United States Government Works – Copyright protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise.

Statutory Provision 17: U.S. Constitution, Article II Section 1. The President, "Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: - "I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my Ability preserve, protect and defend the Constitution of the United States".

Statutory Provision 18: U.S. Constitution Article VI: The Senators and Representatives shall be bound by affirmation, to support this Constitution.

Statutory Provision 19: U.S. Constitution Article I Section 8: The Congress shall fix the Standard of Weights and Measures.

Statutory Provision 20: U.S. Constitution Article II Section 1:

a) The executive power shall be vested in a President of the United States of America.

b) The President, "Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: - "I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my Ability preserve, protect and defend the Constitution of the United States".

Statutory Provision 21: U.S. Constitution Article I Section 8: (Congress) to make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Statutory Provision 22: Extracted from Black's Dictionary. Commercial unit - Means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article) as a machine) or set of articles (as a suite of furniture, or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the market as a single whole. See U.C.C. Paragraph 2-105(6), not included in this writ.

Statutory Provision 23: Paragraph 1498. United States Court of Federal Claims. (a) Whenever an invention described in and covered by a patent of the United States is used or manufactured by or for the United States, without license of the owner thereof or lawful right to use or manufacture the same, the owner's remedy shall be by action against the United States in the United States Court of Federal Claims for the recovery of his reasonable and entire compensation for such use and manufacture et seq.

Statutory Provision 24: Rule of the Supreme Court 10(a): a United States court of appeals has entered a decision in conflict with the decision of another United

States Court of appeals on the same important matter; decided a federal question in a way that conflicts with a decision by a state court of last resort; or has departed from accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

Statutory Provision 25: Rule of Supreme Court 17. Procedure in an Original Action.1 This rule applies only to an action invoking the Court's original jurisdiction under Article III of the Constitution of the United States. See also 28 U.S.C. Paragraph 1251 and U.S. Constitution Amendment 11.

STATEMENT OF THE CASE

I deem it a privilege to be allowed to bring this petition for writ of certiorari for consideration to review before the Supreme Court of the United States.

Section I. Case History: a) This petition for writ of certiorari for consideration to review comes before the Court on behalf of the petitioner(s), Ben J. Tomeo pro se, United States of America and Ben R. Tomeo.

b) The petitioner filed the Complaint in the U.S. District Court in the Northern District of New York on March 28, 1997. On April 16, 1997, the Court ordered the petitioner to sign the Complaint, read and comply with Federal Rule of Civil Procedure 11, and follow the seal and service requirements of the False Claims Act, 31 U.S.C. Paragraph 3721 et seq.

The petitioner filed the Amended and Signed Complaint with over 400 pages of evidence and proof of service pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. Paragraphs 3729-3733 on May 1, 1997. In addition, under some 10 Statues of the U.S. Constitution, the First Amendment, Obstruction of Justice, Assault, Defamation, ERISA and Conspiracies.

In addition, against the U.S. Postal Services, tampering with and failing to deliver paid for and guaranteed service by mail filings to and from the District Court and the U.S. Department of Justice in Washington DC and perhaps in Syracuse New York. The petitioner, as suggested by the Court, served the U.S. Attorney in Syracuse, NY and the U.S. Attorney General in Washington DC with the Complaint and evidence by hand-carrying them to the office of the U.S. Attorney in Binghamton, NY. However, the U.S. Attorney in Syracuse, NY asked the petitioner to serve the U.S. Attorney General in Washington, DC with a third copy of the Complaint on May 16, 1997. That serving was received at the U.S. Department of Justice in Washington DC on May 22, 1997.

c) It appears to be clear from the record that the respondents in the District Court were attorneys in the U.S. Department of Justice. See Item "h".

d) On July 18, 1997, the Court granted the respondent a thirty-day extension to August 21, 1997.

e) The respondent First Motion to Dismiss is date stamped August 22, 1997. The petitioner's Motion to strike and suggest that this case should proceed is date stamped September 17, 1997.

f) On October 24, 1997, the Court dismissed petitioner's Amended Complaint and ordered that the petitioner's have thirty days to file a Second Amended Complaint. In addition, that the Second Amended Complaint must contain individually numbered short, concise statements laying out every cause of action against each defendant. In addition, each paragraph shall contain no more than one factual assertion with reference to the relevant cause of action and the relevant defendant.

g) The petitioner alleges that crimes committed on the servings of the Second Amended Complaint to and from the District Court while in custody of the U.S. Postal Services resulted in the May 9, 1998 Court Order that dismissed this action due to late filing in the Court. In addition, that credible evidence shows those alleged crimes perhaps in only one instance delayed the mail by some seventeen days. The May 9, 1999 Court Order is showed in Section 1 of the Appendix.

h) The respondent's Second Motion suggesting that the Complaint should be dismissed is dated February 2, 1998. It does not suggest that it be filed late in the Court. In addition, it appears to decline intervention. However, the Appellate Court Docket showed those respondents were to be served while the case was in that Court.

STATEMENT OF THE CASE

i) The petitioner's Motion suggesting that the Court should allow the case to proceed is Court date stamped March 9, 1998.

j. The Appellate Court Docket shows that the petitioner's Brief with proof of service was filed on June 1, 1998. The respondent, Allied Signal Inc. filed its Memorandum with proof of service on June 26, 1998.

k. The District Court filed the Complaint "In Camera And Under Seal" pursuant to provisions of the False Claims Act. The Appellate Court Docket shows the Appeal and record Sealed on April 2, 1998. In addition, the pro se sealed flag cleared on April 23, 1998. In addition, some twenty-eight respondents sealed. The petitioner filed some eleven Motions with the Appellate Court after June 1, 1998.

l) The Mandate from the Appellate Court was filed on October 1, 1999. However, the pro se advisor in the Supreme Court on December 22, 1999 said that the Supreme Court requires an Order not a Mandate. The petitioner's case manager in the Appellate Court said on December 22, 1999 that the petitioner should request a copy of the Order from the Appellate Court on December 23, 1999. On that date, the petitioner was told an Order was never sent because it is showed on the Mandate. In addition, they would send the petitioner something that day and information that the petitioner must respond to in this writ is the same as showed in the Mandate. The Appellate Court denied petitioner's request to pay for overnight delivery of that "Document". Due to time constraints and alleged history of tampering with deliveries of the U.S. Mail in this case, the petitioner will refer to the "paper" required by the Supreme Court as the "Document". In addition, that "Document" is showed in the Appendix, if it were available when this writ was served on the Supreme Court and parties.

STATEMENT OF THE CASE

Section II. Jurisdiction: Jurisdiction in the Supreme Court is suggested as follows:

a) Rule of the Supreme Court 10 (a). See the District Court Order and Appellate Court "Document" showed in Section 1 of the Appendix. In addition, see Statutory Provision 24.

b) Rule of the Supreme Court 18 et seq.

c) The petitioner would to have the option to consider Rule of the Supreme Court 17, 19 and 20 et seq.

d) Rule of the Supreme Court 17 relevant to Appendix, Section 2 Paragraph 2, 3, & 4 et seq. See Statutory Provision 25 and Paragraph 7 et seq.

Section III. Special Notification required by Rule of the Supreme Court 29.4 (b), 28 U.S.C. Paragraph 2403(a) may apply. The U.S. Solicitor General is served.

The petitioner served the U.S. Attorney General with all filings in the District Court pursuant to The False Claims. In addition, the petitioner served the appropriate U.S. Attorney while the case was in the Second Circuit Court of Appeals. In addition, the petitioner suggested in a motion and letter that the Appellate Court Clerk should notify the U.S. Attorney General under Federal Rule of Appellate Procedure 44: Cases involving Constitutional Questions Where United States Is Not A Party.

In addition, a copy of the letter that the petitioner sent to the District and Appellate Courts December 13, 1999 follows this paragraph. The appellate Court noted this letter in a revised docket sent to me. The District Court sent the petitioner a copy of the United States' Notice Of Declination to Intervene and Suggestion of Dismissal date stamped August 22, See Case History, Paragraph (e), (h) and Questions 8-10.

STATEMENT OF THE CASE

Clerk, U.S. Court of Appeals, U.S. Court House
40 Foley Square, NY, NY 10007 Case # 98-6067

Clerk, U.S. District Court, Federal Building and
Courthouse, 15 Henry Street, Binghamton, New York
13901, Case # 3:97-CV-442

To Whom It May Concern:

The petition for writ of certiorari I am preparing for the U.S Supreme Court requires that I certify under 28 U.S.C. Paragraph 2403(a), that the district or appellate court has notified the U.S. Attorney General that the action has drawn into question the constitutionality of an act (s) of congress affecting the public interest.

I can't confirm that by the information that I have. The clerk of the Supreme Court says that I must get this information from the district or appellate courts. I need this confirmation by December 20, 1999.

Sincerely,
Ben J. Tomeo Pro se

1.0 Introductory Statement:

1.1 This will suggest to the Court that those attorneys in the Department of Justice have suggested numerous statutes under which the court should dismiss this action. In addition, it appears from court orders that the petitioner arguments compelled the Court to strike those motions in those arguments. The Appellate Court "Document" involving in this Court says that the appeal is dismissed because it "lacks an arguable basis in fact or law" raises confusion in my mind in how to proceed, is the appeal or case dismissed. In addition, "lacks an arguable basis in fact or law" is an argument for dismissal not addressed in the record. The petitioner will try to cover all bases so that the Court might allow the case to proceed.

STATEMENT OF THE CASE

1.2 From the information I have been able to ascertain high level officials in the Government believe that all new products contain all new parts. This will suggest to the Court that new products contain little of that which is new and a lot of that which is in service for periods of time often exceeding thirty years. In addition, those officials did not appear to grasp the fact that computer data is relevant over large durations of time. That is, if it were degraded at any particular moment in time it would instantly and unavoidable degrade processes and things dependent on it. The record notes that higher education is failing to teach those fundamental truths.

1.3 The complaint alleges that those industry groups that prepares Government standards have known since 1966 that errors they contain have almost certain potential to degrade $Trillions worth of data and products, much of it paid for and owned by the United States of America. In addition, those industry group endeavors for manufacturing and education, such as computer-aided design, drafting and manufacturing are introduced with wanton disregard for damages and added costs that are likely to accrue to others because they are not doable in the real world. Credible documents in the record authored by employees of those companies show they never were doable in the laboratories. The companies just moved to another endeavor just as undoable in the real world.

1.4 The record aches to make the point that information on engineering drawings and in standards etc., shall only contain information that is relevant to how those effected products shall be designed, manufactured, inspected and assembled to meet those requirements specified in the contract (s). Those industry groups strategies for manufacturing, perhaps for overcharging, such as high reliability controls and Six Sigma often

show their cost factors on the engineering drawings. See Paragraph 3.1a. This practice tends to confuse credible information on the drawings that is necessary to meet those requirements specified in the contracts. In addition, such misleading information is often placed in documents for competitive advantage. This practice tends to deny competitive bidding.

1.5 The record suggests that presidents and members of congress due to the nature of such things are far behind their counterparts in the private sector in knowledge pertinent to advancing manufacturing technologies. In addition, if public education doesn't keep pace with advancing technologies, presidents and members of congress are at a substantial fiduciary disadvantage with their counterparts in the private sector in safeguarding the fiduciary interests of the United States of America. This will suggest to the Court that it could be said with a high level of certainty that those processes in which man works with materials and ideas will always be somewhat flawed with respect to prevailing states of knowledge in the arts and crafts. In addition, that such flaws, when not recognized, deceptively add hidden tolerances to tolerances that are specified.

2.1 The petitioner's involvement in matters relevant to this case began with the release of Government Standard ANSI Y14.5 in 1966. The record alleges that an error in that standard is somewhat akin to the error in the software standard resulting in the Y2K computer glitches. An important difference however is that the error in ANSI Y14.5 is increasingly more damaging to products designed to make better use of materials. That is because, less safety factor of material is available for the error to work through before it could result in failure of those products that are so effected.

2.2 The record and information in my copyright for

dimensional analyses in the record suggest that the effects of the subject error in ANSI Y14.5 could be substantially mitigated if the standard showed parts dimensioned from their surfaces rather then from centerlines of the manufacturing and inspection equipment. In addition, that the Government should place such information in the public domain.

3.0a Computers in industry and education say between 1976-1990: The record alleges that those concerns showed in Paragraph 2 and elsewhere in the record, and more concerns perhaps not clearly defined in the record, would not have allowed those computers to be successfully introduced. See Appendix Section 2 Paragraph 3.0a.

3.0b Paperless drawings and manufacturing say between 1976-Present: The record alleges that endeavor can not be achieved for much the same reasons showed in Paragraph 2 et seq. and 3.0a. See Appendix Section 2 Paragraph 3.0b.

3.0c Metrics say between 1968 – Present. The record alleges that the manner in which metrics is being introduced is fraught with danger. In addition, it pleads for finding(s) of a credible study. See Appendix Section 2 Paragraph 3.0c.

3.1 The record alleges that industry group endeavors such as the following have no basis in fact in improving product quality in ways in which they are promoted: Paperless Drawings and Manufacturing, Total Quality Control, People Empowerment Over Documents, 3D Modeling, Six Sigma, Total Quality Speed, High Reliability controls etc. In addition, credible evidence in the record shows that the high reliability controls strategy adds enormous costs to products procured by the Government for things it can not do. In addition, it shows

it lowers quality in manufacturing because its costing information is placed on engineering drawings. This practice confuses that information on the drawings that must be used to design, manufacture and inspect the products. In addition, it impinges on the Government's approved Quality Control Procedures. See Appendix Section 2 Paragraph 3.1 et seq.

4.0 The record makes the point that losses such as those alleged in this case could not have resulted if the Government had a credible industrial policy for manufacturing and education. In addition, that the Government had such a policy. In addition, at some point in time it was systematically defeated or stopped being enforced. See Appendix Section 2 Paragraph 4 et seq.

4.0.1 This will suggest to the Court that there is large difference in competitive bidding for one item for one purpose with respect to one item for one purpose manufactured in relatively large quantities for relatively large quantities of end-items in service for periods of time often exceeding twenty-five years. In addition, if the later were not procured to the same drawings would result in proliferation of parts and testing. Also, maintenance for those items would be more difficult and costly. The petitioner has engineering experience in second source electrical connectors for Polaris submarines. In that case, the company slightly adapted the first source drawings to meet small differences in standards. This practice better assures interchangeability in all directions. See Appendix Section 2 Paragraph 4 et seq.

4.1 The record shows that computers and the internet are being introduced to students in schools prior to teaching them proper keyboarding skills. In addition, it suggests that such instruction will cause those students to be less productive then need me for jobs in information technologies. In addition, it could result in greater

numbers of repetitive stress injuries starting at much earlier ages. (It is in the public domain that the U.S Department of Labor is concerned about increasing numbers of repetitive stress injuries in the workplace). See Appendix Section 2 Paragraph 4.1 & 4 et seq.

4.2a The record suggests that some works are too valuable to the public interest to be protected by copyright or patent. Such as, the work showed in Paragraph 2 et seq. Section 2 of the Appendix, the petitioner's copyright for dimensional analyses abridged in Paragraph 2 of the Appendix and perhaps some computer software. In addition, the petitioner would like to assign the copyright to the Government so that the Government could place the expressions it contains into public domain, perhaps in its industrial policy for manufacturing and education. See Appendix Section 2 Paragraph 4.2 & 4 et seq.

4.2b This will suggest to the Court that this thing we know as "globalization" after many years remains secret to the people. In addition, it increasingly more so intrudes on all things that the people hold to have the most precious earned material and spiritual values. In addition, forced redistribution of wealth and knowledge is a violation of well-known fundamental laws. In addition, there is a direct relationship between earned material and spiritual values that can not be abridged. In addition, free enterprise has demonstrated to be the force that fairly distributes wealth and knowledge. In addition, those jobs in manufacturing leaving the United States are important to stay here to grow a society that seeks equilibrium in material and spiritual values. In addition, the industrial revolution is yet in its infancy and such education and works that challenges the people's minds and energies are mutually beneficial and rewarding to both the individual and society. See Appendix Section 4 et seq.

4.2cThis will suggest to the Court that information

in the public domain suggest that a competitive council has powerful influence in how the president manages the Executive Branch of the Government. In addition, a candidate for President 2000 said on television to paraphrase, managing the Executive Branch was too complex for the president and he would enlist help from those outside the Government to do that if he were elected President. In addition, a former cabinet secretary confirmed those views on television. See Appendix Section 2 Paragraph 4 et seq.

5.0 How the history of this case has effected the petitioner and his family in troubling ways since say, 1966. It is the petitioner's opinion that its history has so effected the United States of America. See Appendix Section 2 Paragraph 5 et seq.

6.0 Gist of retaliations in such matters relevant to this case. See Appendix Section 2 Paragraph 6 et seq.

7.0 Summation: See Appendix Section 2 Paragraph 7 et seq. and the following.

7.1 See Statement of the Case Paragraph 3.1a and specifically Appendix Section 2 Paragraphs 3.1a and 3.1.b.

7.2a The high reliability program was applied to the company's entire line of DOD-C-38999 electrical connectors. Those connectors are used in weapon systems, NASA projects and commercial products such as aircraft etc. Charges are clearly showed on documents relevant to contracts leading directly to the prime contract. This product line is the only one that the petitioner saw in his twenty-five year plus association with the company that the Government placed a stop-work order on due to quality concerns. Such bogus quality control, inspection, and design information placed on engineering drawings for overcharging confuses bona fide information that must to

be used to design, manufacture and inspect those products to requirements of procurement contracts. It also conflicts with quality control procedures the Government approved.

7.2b Much of the information in the cover story of the July 21, 1998 USA Today, "Firms aim for Six Sigma efficiency, Magic wand or malarkey", and the August 10, 1998 WSJ article, "Jack Welch Disciple Finds that GE Mystique Only Takes You So Far" relevant to Six Sigma, appears to substantiate those allegations of overcharging the Government, and that Six Sigma can not improve the quality of products in the ways in which it is marketed.

7.3 Chairman Bossidy of Allied Signal, in such articles as referenced above, is prominently associated with current Six Sigma initiatives. Ralph Nader, at a recent congressional hearing associated Allied Signal with say 55% overcharging the Government when compared with those charges in the private sector. The following extractions are from the cover story in USA Today: a) "Leading the revolutionaries is General Electric, which announced another quarter of records profits this month and became the first company worth more than $300 billion based on its stock price". "But Six Sigma's founding company, Motorola, this month reported second-quarter operating profit shrank to almost zero. It is cutting 15,000 of its 150,000 jobs". b) The article refers to proponent companies such as "Raytheon, Lockheed Martin and IBM" whose disastrous results with Six Sigma are in the public domain. c) "John Ackers promised to turn IBM around with Six Sigma, but the attempt was quickly abandoned when Akers was ousted as CEO in 1993". (Much such information in the public domain first appears in my reports to officials in the Government.

7.4 It is in the record that Ackers was quoted as saying at that time, "IBM lied to me. This writ alleges that IBM many years ago abandoned its attempt to

introduce metrics in its products. A matter that the case pleads the Court to respond to is that, high level officials in those companies are yet continuing to market those endeavors that failed in their companies decades ago to other companies, the president, congress, colleges and universities and the American people. See Question 28.

7.5 The following is Paragraph 6.42 showed in the Appendix: The following is extracted from my September 15, 1996 letter to FBI Director Louis Freeh showed in the record: Paragraph 1.2.2 It wasn't until late 1984 that Government standards reflected that the "on track" industrial policy had derailed by ambiguously mingling the customary and metric standards of weights and measures. Government Standard ANSI Y14.5 introduced metrics in the 1982 revision, however the revision wasn't released until 1984. The delay might have been because it was then evident to the members of the industry groups that concerns with Government standards that I have reported to the Government since 1988 were about to aggressively degrade the Nation's products and data. The revisions to ANSI Y14.5 after 1982 were only re-affirmations of the 1982 revision by a few members of the committee. In my view, the findings of a Government inquiry into ANSI Y14.5 and associated matters are essential if the president and congress could (hope to) govern effectively.

7.5.1 The following is from Paragraph 7.1 showed in the Appendix: My supervisor at the Bendix Corporation in Sidney, New York (Daniel Bibeau) recognized the error that I refer to in the 1966 release of ANSI Y14.5 in 1959 or before. A book he co-authored with employee Don Sweet copyrighted by the Division in 1959 discusses the error as far as it could be developed at that time. My job description said that I should do what I knew or could learn how to do to protect the company's products from that error. ANSI Y14.5 associates with

functional gages. The thought was that relating parts to the functional gages would allow a better understanding of hidden accumulations of tolerances. At that early date, I was fixing the expressions in the copyright in tangible form by associating with functional gages.

7.6 This will suggest to the Court that the matter of dominant importance is that information for overcharging the Government showed on engineering drawings corrupts the bona fide information on those drawings that must be used to design, manufacture, inspect and assemble so effected products up to and including end-items associated with prime contracts.

7.6.1 ANSI Y14.5 promotes the use of functional gages. See Paragraph 7.23.4 in the Appendix.
This case alleges that the Sandia Corporation provided seed money to companies based on charges for functional gages prior to any work accomplished that could define those gages. In addition, the industry group spread the word that every time pricing saw a true position dimension on a drawing they should add a charge for that gage and that inspection. Even if this wasn't overcharging, it would contradict sound manufacturing and inspection practices. The case alleges that consultants associated with the ANSI Y14.5 industry group instructed solely on ways to obtain seed monies and to overcharge in associations with functional gages. In addition, that few, if any gages were ever manufactured. If they were, they were invalid because information needed to design them in the standard is too flawed for such purposes.

7.7 The following is extracted from the Acceptance Notice showed in the 1982 revision of ANSI Y14.5M: (The "M" denoted metrics). This Non-Government document was adopted on 20 December 1982 and is approved for use by the DOD. The indicated industry groups have furnished the clearances required by existing

regulations. Copies of this document are stocked by DOD Single Stock Point, Naval Publications and Forms Center, Philadelphia, Pa. 19120, for issue to DOD activities only. Contractors and industry groups must obtain copies directly from ASME, 345 East 47th Street, New York, NY 19917, or from ANSI, 1430 Broadway, New York, NY 10018.

Certain provisions of this standard are the subject of International Standardization Agreement ASCC Air-std-104/121, Dimensioning and Tolerancing, and QSTG-253, General Drawing Practices (ABCA-ARMY), to which the U.S. Navy also subscribes. When reaffirmation, amendment, revision, or cancellation of this Standard is proposed, the military coordinating activity shall take appropriate action through military international standardization channels, including Departmental Standardization Offices, as required. When reaffirmation, amendment, revision, or cancellation of this Standard is initially proposed, the industry group responsible for this Standard shall inform the military coordinating activity of the proposed change and request participation.

7.7.1 The following is extracted from the page that contains the copyright notice: This code or standard was developed under procedures accredited as meeting the criteria American National Standards. The Consensus Committee that approved the code or standard was balanced to assure that individuals from competent and concerned interests have had an opportunity to participate. The proposed code or standard was made available to public review and comment which provides an opportunity for additional public input from industry, academia, regulatory agencies, and the public at large.

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STATEMENT OF THE CASE

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7.8 If a Government Standard could be copyrighted, and the copyright notice is within the law, infringements of suspect information on engineering drawings associated with ANSI Y14.5 would be in trillions of instances.

7.9 It is in the record that the petitioner had to file a legal action alleging breach` of copyright to protect his entire catalog of songs that was in process of being systematically breached. The CD that he will have in the marketplace in early January 2000 will demonstrate the value of his catalog of songs. The recording artist is Lin-Z. Lyn-Z just turned sixteen. She has remarkable ability to color a song. The title of the CD is "Shades of Love". I haven't had time to get the marketing together yet, but I believe sound bites will be on www. THEORCHORD.com It will also be available on the Internet in sites such as, Amazon.com and Cdnow. The Conclusion follows.

STATEMENT OF THE CASE

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ben J. Dominguez

Date: December 28, 1999